

**STATE OF TENNESSEE
DEPARTMENT OF HEALTH**

IN THE MATTER OF:)	BEFORE THE TENNESSEE BOARD
)	OF MEDICAL EXAMINERS
FRANK H. MCNIEL, M.D.)	
RESPONDENT)	CASE NOS.: 2001002702, 201001283,
)	201201930, 2012019421,
KNOXVILLE, TENNESSEE)	201201259 and 201601860
TENNESSEE LICENSE NO. 16119)	

CONSENT ORDER

Comes now the Division of Health Related Boards of the Tennessee Department of Health (hereinafter the "Division"), by and through the Office of General Counsel, and Respondent Frank H. McNiel, M.D. (hereinafter "Respondent"), who would respectfully move the Tennessee Board of Medical Examiners (hereinafter the "Board") for approval of this Consent Order affecting Respondent's medical license in the State of Tennessee.

The Board is responsible for the regulation and supervision of medical doctors licensed to practice in the State of Tennessee. *See Tennessee Medical Practice Act, Tennessee Code Annotated Section (hereinafter "TENN. CODE ANN. §") 63-6-101, et seq.* It is the policy of the Board to require strict compliance with the laws of this State, and to apply the laws so as to preserve the quality of medical care provided in Tennessee. It is the duty and responsibility of the Board to enforce the Tennessee Medical Practice Act in such a manner as to promote and protect the public health, safety and welfare in every practicable way, including disciplining medical doctors who violate the provisions of TENN. CODE ANN. § 63-6-101, *et seq.* or the Rules and Regulations promulgated by the Board and recorded in the Official Compilation Rules and Regulations of the State of Tennessee (hereinafter "TENN. COMP. R. & REGS.").

Respondent Frank H. McNiel, M.D., by his signature to this Consent Order, waives the right to a contested case hearing and any and all rights to judicial review in this matter. Respondent agrees that presentation to and consideration of this Consent Order by the Board for ratification and all matters divulged during that process shall not constitute unfair disclosure such that the Board or any of its members shall be prejudiced to the extent that requires their disqualification from hearing this matter should this Order not be ratified. Likewise, all matters, admissions and statements disclosed or exchanged during the attempted ratification process shall not be used against Respondent in any subsequent proceeding unless independently entered into evidence or introduced as admissions.

Respondent expressly waives all further procedural steps and expressly waives all rights to seek judicial review of or to challenge or contest the validity of this Consent Order. Respondent understands that by signing this Consent Order, Respondent is allowing the Board to issue its order without further process. Respondent acknowledges that this is a formal disciplinary action and will be reported to the National Practitioner Data Bank and/ or similar agency. In the event that the Board rejects this Consent Order for any reason, it will be of no force or effect for either party.

I. STIPULATIONS OF FACT

1. Respondent has been at all times pertinent hereto licensed by the Board as a medical doctor in the State of Tennessee, having been granted Tennessee medical license number 16199 by the Board on February 27, 1985, which has a current expiration date of October 31, 2018.
2. The Department conducted an investigation of the Respondent's prescribing practices, reviewing approximately 75 patient records. That investigation and review reflected that, from 2002 to present and while practicing at Bearden Healthcare Associates in Knoxville, Respondent engaged in a pattern of prescribing opioids and other controlled substances in excessive amounts and inconsistent with and below the applicable standard of care. Specifically, he prescribed controlled substances in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition and/or not for a legitimate medical purpose; without attempting alternative non-narcotic modalities; and without appropriately monitoring for abuse and diversion.
3. Further, during this time period, Respondent served as supervising physician for multiple allied practitioners (advanced practice registered nurses and physician assistants) who continued such excessive prescribing of opioids excessive amounts and inconsistent with and below the applicable standard of care in violation of the rules adopted by the Tennessee Board of Medical Examiners and the Tennessee Board of Nursing. Respondent failed to appropriate supervise such allied prescribers

whose prescriptive services were within his control and responsibility under Tennessee law and failed to appropriately respond to conduct that was below the standard of care.

4. After approximately 2012, Respondent ceased working at Bearden Healthcare Associates but continued to see patients out of his home. The majority of these patients were treated with opioids, benzodiazepines and/or carisoprodol and were treated for chronic pain management. Respondent's practice out of his home during this period qualified as a pain management clinic; however, Respondent did not obtain certification or licensure of the clinic as required by Tennessee law.
5. Respondent's treatment of the patients seen since 2012 out of his home medical practice continued to be below the applicable standard of care as described in paragraph 2 *supra*. Respondent also did not query the Controlled Substance Monitoring Databased for these patients as required by Tennessee law.
6. Pursuant to an investigation of Respondent's ongoing medical practice out of his home, certain patient records were requested from Respondent by the Tennessee Department of Health. Respondent was unable to produce records for all patients as requested and, for other patients, Respondent was unable to produce a complete medical record.

II. GROUNDS FOR DISCIPLINE

The facts stipulated to in the Stipulations of Fact are sufficient to establish that grounds for discipline of Respondent's medical license exist. Specifically, Respondent has violated the

following statutes or rules which are part of the Tennessee Medical Practice Act, (TENN. CODE ANN. § 63-6-101, *et seq.*) for which disciplinary action before and by the Board is authorized:

7. The facts stipulated in paragraphs 1 through 6, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(1):

Unprofessional, dishonorable or unethical conduct.

8. The facts stipulated in paragraphs 1 through 6, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(2):

Violation or attempted violation, directly or indirectly, or assisting in the violation of, or conspiring to violate, any provision of this chapter or any lawful order of the board issued pursuant thereto, or any criminal statute of the state of Tennessee.

9. The facts stipulated in paragraphs 1 through 6, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(12):

Dispensing, prescribing or otherwise distributing any controlled substance or other drug not in the course of professional practice, or not in good faith to relieve pain and suffering, or not to cure an ailment, physical infirmity or disease, or in amounts and/or for durations not medically necessary, advisable or justified for a diagnosed condition.

10. The facts stipulated in paragraphs 1 through 6, *supra*, constitute a violation of TENN. CODE ANN. § 63-6-214(b)(14):

Dispensing, prescribing or otherwise distributing any controlled substance or other drug to any person in violation of any law of the state or of the United States.

11. The facts stipulated in paragraph 3-4, *supra*, constitute a violation of Rule 0880-02-.18(6) and 0880-06-.02(6) of TENN. COMP. R. & REGS. which authorizes disciplinary action against a Respondent where the supervising physician fails to be responsible for ensuring compliance with the applicable standard of care and fails to develop clinical guidelines in collaboration with the physician assistant and certified nurse practitioner to include a method for documenting consultation and referral.

12. The facts stipulated in paragraph 6, *supra*, constitute a violation of TENN. CODE ANN. § 63-1-301 et seq. which requires certification/ licensure of any pain management clinic operating within Tennessee.
13. The facts stipulated in paragraph 7, *supra*, constitute a violation of TENN. CODE ANN. § 53-10-310 which requires healthcare practitioners to check the controlled substance monitoring database prior to prescribing certain controlled substances at the beginning of a new episode of treatment and at least annually thereafter.
14. The facts stipulated in paragraph 8, *supra*, constitute a violation of TENN. CODE ANN. § 63-1-117 which requires health care providers to make their medical records available for inspection and copying by the Tennessee Department of Health.
15. The facts stipulated in paragraph 8, *supra*, constitute a violation of Rule 0880-02-.15 (4) of TENN. COMP. R. & REGS. which requires licensed medical doctors to create and maintain medical records.

III. POLICY STATEMENT

The Tennessee Board of Medical Examiners takes this action in order to protect the health, safety and welfare of the citizens of the State of Tennessee.

IV. ORDER

NOW THEREFORE, Respondent, for the purpose of avoiding further administrative action with respect to this cause, agrees to the following:

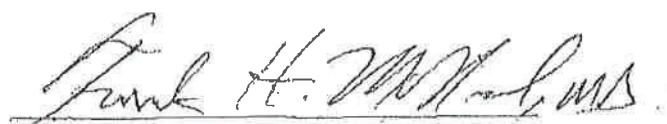
16. The Tennessee medical license of Frank H. McNeil, M.D., license number 16119, is hereby **PERMANENTLY SURRENDERED**, commencing the date of ratification of this Consent Order.
17. Respondent acknowledges that the surrender of his medical license is formal disciplinary action which shall be reported to the National Practitioner Data Bank and that the surrender has the same effect of and shall be reported as a revocation.

This **CONSENT ORDER** was approved by a majority of a quorum of the Tennessee Board of Medical Examiners at a public meeting of the Board and signed this 20th day of March, 2018.



Chairperson
Tennessee Board of Medical Examiners

APPROVED FOR ENTRY:



Frank H. McNeil, M.D.

Respondent

Tennessee License Number 16119

10321 Kingston Pike

Knoxville, Tennessee 37922

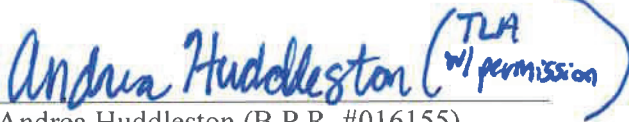
19 March 2018
DATE



Samuel P. Helmbrecht, Esquire
Attorney for Respondent
BPR# 23683
214 Second Avenue North, Suite 300
Nashville, Tennessee 37201

3/20/18

DATE



Andrea Huddleston (B.P.R. #016155)
Deputy General Counsel
Office of General Counsel
Tennessee Department of Health
Plaza I, Suite 210
220 Athens Way
Nashville, Tennessee 37243
(615) 741-1611

3/20/18

DATE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served upon Respondent, through his attorney, Samuel P. Helmbrecht, Esq., 214 Second Avenue North, Suite 300, Nashville, Tennessee 37201, by certified mail number 7016 0600 0000 6507 9847, return receipt requested and by regular mail, with sufficient postage thereon to reach its destination.

This 21st day of March, 2018.

Andrea Huddleston (w/ permission TLA)

Andrea Huddleston
Deputy General Counsel
Tennessee Department of Health